

Committee on Trade-Related Investment Measures

Status

The Agreement on Trade-Related Investment Measures (TRIMS) prohibits investment measures that violate the GATT Article III obligations to treat imports no less favorably than domestically produced products, or the GATT Article XI obligation to remove quantitative restrictions on imports. The Agreement thus expressly eliminates measures such as those that require the incorporation of local inputs or “local content requirements” in the manufacturing process, or measures that restrict a firm’s imports to an amount related to its exports or related to the amount of foreign exchange a firm earns (“trade balancing requirements”). It also includes an illustrative list of measures that violate its requirements. The Agreement requires that any such measures existing as of the date of entry into force of the WTO (January 1, 1995) be notified and eventually eliminated. Developed countries were required to bring notified measures into conformity by January 1, 1997. Developing countries had until January 1, 2000, and the least developed countries have until January 1, 2002.

Assessment of the First Five Years of Operation

The TRIMS Agreement successfully provided for the first time an unambiguous method for addressing investment measures such as local content and trade balancing requirements. Previously, a Member interested in pushing for the removal of such practices would have recourse only through GATT Articles III and XI; the interpretation of which had been under dispute. Additionally, the notification process provided a listing of measures that are not in compliance with the Agreement, which will prove useful as transition periods expire at the end of 1999.

The TRIMS Agreement has been supported by U.S. labor groups, who consider that the measures that the Agreement prohibits lead to increased overseas production at the expense of U.S. employment and to increased competition from imports as firms strive to meet trade balancing requirements. U.S. industry has also advocated for the Agreement as a general rule because it allows exporters and investors to overcome certain measures that would otherwise inhibit their ability to operate. The eventual removal and prohibition of such practices can help a company increase export sales, reduce transactions costs, enhance productivity and efficiency and increase profitability.

Since its establishment in 1995, the Committee on TRIMS has been a forum for the United States and other Members to address concerns, gather information, and to raise questions about the maintenance, introduction or modification of TRIMS by certain WTO Members, particularly in the automotive sector. Twenty-four WTO Members submitted notifications of inconsistent measures to the TRIMS Committee, as required by the terms of the Agreement, to enjoy the benefit of the grace periods described above. Three developing countries eliminated inconsistent measures ahead of the January 2000 deadline to remove notified TRIMS.

In 1997, the United States, along with the EU and Japan, brought a WTO dispute against two Indonesian automotive programs that included local content requirements. In 1998, the DSB adopted the panel’s finding that the local content aspects of the automotive programs were inconsistent with the TRIMS Agreement. By July of 1999, Indonesia eliminated the inconsistent measures in compliance with the DSB’s recommendation.

The United States also challenged Brazilian automotive measures, which the United States asserted were inconsistent with the Agreement since certain measures entered into force after the Agreement came into

effect and without proper notification. In March of 1998, after consultations with the United States, Brazil reached a bilateral agreement to accelerate removal of the measures.

Major Issues in 1999

The Committee met twice during 1999. The United States, supported by a number of other Members, used the forum to raise questions regarding developing country Members' plans to comply with the developing country deadline to remove inconsistent measures by January 1, 2000.

The United States also challenged a number of Members' existing TRIMS, which appeared inconsistent with the terms of the Agreement. In particular, the United States questioned a new Indian law that appeared to expand a previously notified measure in the automotive industry. The United States subsequently requested consultations with regard to this measure under the WTO Dispute Settlement Understanding. (See section on the Dispute Settlement Body.)

The Committee also discussed the timing and content of the coming review regarding the operation of the Agreement mandated by Article 9. The Article states that the Council for Trade in Goods (CTG), no later than five years after entry into force of the WTO Agreement, must begin a review of the operation of the TRIMS Agreement and, as appropriate, propose amendments to the Agreement's text. In the course of this review, the CTG also must consider whether provisions on investment policy and competition policy should be added. While the CTG has begun discussing the nature of the review, no decisions on these matters have been taken.

Work for 2000

The Committee will have two major areas of work in 2000. First, regarding implementation, Article 5.3 of the Agreement provides authority for the Council on Trade in Goods (CTG) to extend the transition period for the elimination of notified TRIMS of developing and least developed country Members which demonstrate particular difficulties in implementing the provisions of the Agreement. Eight Members have requested the CTG to extend their transition periods in accordance with this provision. These Members are Romania, Chile, Argentina, Malaysia, Pakistan, Colombia, the Philippines, and Mexico. The CTG's consideration of these requests has already begun. Consultations among interested Members have taken place, and written questions and answers have been exchanged with respect to some of the requests and the respective measures.

The second area of work will involve the Article 9 review. The educative work already undertaken on investment and competition policy by the working groups established at the Singapore Ministerial (discussed in more detail separately in this report) will provide a strong background to draw upon as the review gets underway. Accordingly, the Committee can be expected to support the work of the CTG as needed in the consideration of the requests for extension and in the review of the operation of the Agreement.

The general subject of implementation and compliance with the Agreement will be an issue at the core of both of these areas of work. The matter of specific requests for extension must be addressed, in addition to the issue of Members' noncompliance with the terms of the Agreement. Some developing countries have expressed the need for the Article 9 review to consider the question of relief from the obligations of the Agreement for development reasons. On the other hand, Article 9 is also an opportunity for Members to consider provisions that might strengthen the Agreement's objectives to reduce the trade-restrictive and distorting effects of investment measures and to facilitate international investment.